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*Attorneys for Alatex-Tenn, LTD.  
c/o C&W Manhattan Associates*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**IN RE:** § **CHAPTER 11 CASE**  
**SEARS HOLDINGS CORPORATION,** §  
*et al.*<sup>1</sup>, § **CASE NO. 18-23538 (RDD)**  
**DEBTORS.** § **(Jointly Administered)**  
§

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**ALATEX-TENN, LTD'S CURE CLAIM OBJECTION FOR STORE 9621  
(LEBANON, TENNESSEE)**

TO THE HONORABLE ROBERT D. DRAIN, UNITED STATES BANKRUPTCY JUDGE:

Alatex-Tenn, Ltd, ("Alatex") files this Objection to the Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction [Docket No. 1731] (the "Cure Notice") and in support thereof would show as follows:

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); Service Live Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innoval Solutions, Inc. (7180); Kmart Corporation (9500); Max Serv, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); My Gofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); Star West, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); [BlueLight.com](http://BlueLight.com), Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); [Kmart.com](http://Kmart.com) LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

## **I. BACKGROUND**

1. On October 15, 2018 (“Petition Date”), Sears Holdings Corporation and several of its affiliates, including Kmart Corporation, filed voluntary petitions under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their affairs as debtors-in-possession under 11 U.S.C. §§ 1107 and 1108.

2. As of the Petition Date, Alatex was the landlord and Kmart Corporation (“Debtor”) was the tenant under a lease of nonresidential real property located in Lebanon, Tennessee (Kmart Store No. 9621) dated as of May 10, 1979, as amended and modified from time to time (“Lease”). C&W Manhattan Associates was the original lessor, the Lease was subsequently assigned and is currently held by Alatex.

3. On January 18, 2019, the Debtors filed and served Alatex with its *Cure Notice*, including amounts the Debtors believe were required to cure all defaults then existing under such contracts to be assumed (the “Cure Amounts”).

4. The Debtors indicated in the Cure Notice that they intend to assume the Lease with Alatex (the “Proposed Assumed Contract”).

5. Pursuant to the Cure Notice, the Debtors identified \$7,830 as the amount which it alleges to be owing Alatex under the Proposed Assumed Contract.

6. Alatex agrees to the assumption of Proposed Assumed Contract with the Debtors; however, Alatex disputes the Proposed Cure Amount in the Cure Notice. Alatex’s books and records reflect a cure amount is not less than \$50,180.44 which is detailed below.

## **II. OBJECTION TO CURE AMOUNT**

7. As of the Petition Date, Alatex was the landlord and Kmart Corporation (“Debtor”) was the tenant under a lease of nonresidential real property located in Lebanon,

Tennessee (Kmart Store No. 9621) dated as of May 10, 1979, as amended and modified from time to time (the “Lease”). Alatex has no objection to the assumption of the Lease provided the proper cure amount is paid.

8. The categorical breakdown of the monetary cure claim is as follows:

- Unpaid pre-petition rent for the period October 1-14, 2018 due under the Lease: \$7,830.40
- Unpaid 2018 property taxes in the amount of \$42,350.00. The 2018 property taxes are currently due and payable and become delinquent on February 28, 2019. Please see the attached Exhibit A.

Total cure claim is \$50,180.44.

9. Pursuant to 11 U.S.C. § 365(b)(1)(A), the Debtors must cure any defaults under the Alatex Lease in connection with any proposed assumption, as well as provide adequate assurance of future performance. In this case, Debtors’ Proposed Cure Amount of \$7,830 fails to cure the additional existing defaults of the Alatex Lease, as is required under Section 365 prior to assumption.

10. The correct cure amount is \$50,180.44 for unpaid prepetition rent for the period October 1-14, 2018, as well as unpaid 2018 property taxes due under the Lease. As a result, under 11 U.S.C. § 365(b)(1)(A), in order to assume the Alatex Lease, Alatex must receive a cure payment of at least \$50,180.44. Otherwise, the Lease cannot be assumed pursuant to Section 365.

11. This Cure Claim Objection is without prejudice to the fact that other and additional cure claim amounts (a) may exist and/or may become known at a future date and (b) will accrue on an ongoing basis between the filing of this Cure Claim Objection and any subsequent assumption of the Lease. Alatex expressly reserves its right to amend or supplement its Cure Claim Objection though and including the effective date of any proposed

assumption and assignment of the Lease.

WHEREFORE PREMISES CONSIDERED, Alatex prays (i) that the cure amount set forth in the Cure Notice be corrected to reflect the correct prepetition cure amount of \$50,180.44, which represents prepetition amounts due and owing under the Alatex Lease ; (ii) that Alatex be paid a cure payment of \$50,180.44 in connection with the assumption of the Lease; and that (iii) Alatex be awarded such other and further relief to which it may be justly entitled at law or in equity.

Dated: January 25, 2019  
San Antonio, Texas

RESPECTFULLY SUBMITTED,

ANGLEY & BANACK, INCORPORATED  
745 E. Mulberry, Suite 900  
San Antonio, Texas 78212  
(210) 736-6600 Telephone  
(210) 735-6889 Fax

By: /s/ David S. Gragg  
David S. Gragg  
State Bar No. 08253300  
Natalie F. Wilson  
State Bar No. 24076779

ATTORNEYS FOR ALATEX-TENN, LTD.,  
c/o C & W MANHATTAN ASSOCIATES

#### CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2019, a true and correct copy of the foregoing document was electronically transmitted to the Clerk of the Court using the ECF System for filing and transmitted electronically to all ECF participants registered to receive electronic notice in the bankruptcy proceeding including the parties below:

DEBTORS

(served via attorneys)

DEBTORS' COUNSEL

(served electronically)

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New York, NY 10014  
Paul Schwartzberg  
Richard Morrissey

*/s/ David S. Gragg*  
David S. Gragg

# EXHIBIT A

Wilson - 2018 Property Tax Notice  
Jim H. Major, Trustee



Jim H. Major, Trustee  
P.O. BOX 865  
Lebanon, TN 37088



DIST	MAP	GP	C-MAP	PARCEL	SP-INT	I	CITY
3	58		58	19.01	001		404
Property Address				Tax Bill #	Tax Year	TOTAL DUE	
1443 W MAIN ST				780	2018	\$1,847.00	

- To avoid interest, taxes must be paid by February 28th, 2019
- Date printed: 10/22/2018
- Balance due if paid in October: \$1,847.00

Amount Paid



ALATEX C/O K MART CORPORATION  
PO BOX 927000 DEPT 768TAX  
HOFFMAN ESTATES, IL 60179

Jim H. Major, Trustee  
P.O. BOX 865  
Lebanon, TN 37088  
PHONE: (615) 444-0894  
FAX: (615) 449-4678

*Please return the top portion along with your check.*

Wilson - 2018 Property Tax Notice

DIST	MAP	GP	C-MAP	PARCEL	SP-INT	I	CITY
3	58		58	19.01	001		404

Any questions please call office at the numbers printed below.  
To avoid interest, taxes must be paid by

February 28th, 2019

Balance due if paid in October: \$1,847.00

Wilson County Trustee  
P.O. BOX 865  
Lebanon, TN 37088  
PHONE: (615) 444-0894  
FAX: (615) 449-4678

- On our website: <http://tnpayments.com/wilson> with an electronic check, credit or debit card (Additional fees will apply).

For City Taxes Please Call  
Lebanon 615-444-6300  
Watertown 615-237-3326  
MT Juliet 615-773-6208 or 615-754-2552

Property Address		
1443 W MAIN ST		
Classification		
Subdivision		
Lot	Acres	Block
Additional Description		
K MART EXPRESS		
Land Value	\$	0.00
Improvement Value	\$	159,100.00
Personal Property	\$	0.00
Appraised Value	\$	159,100.00
Exemption		No
Equal Factor		0
Net Value	\$	159,100.00
Assessed %		0.400000000
Assessed Value	\$	63,640.00
Base Tax Rate	\$	2.51890
Base Tax	\$	1,603.00
SSD Tax Rate	\$	0.38270
SSD Tax	\$	244.00
Total Tax	\$	1,847.00
Interest	\$	0.00
Rollback Tax	\$	0.00
Balance Due	\$	1,847.00

TAX YR	2018	RECEIPT NO.	0000233	
ROBERT SPRINGER COMMISSIONER OF FINANCE 200 CASTLE HEIGHTS AVE N LEBANON TN 37087				
(615) 444-6300				
DI 03	MAP 058	GP	CTL MAP 058	PARCEL 01901 S/I 001
PROPERTY ADDRESS W MAIN ST 1443				
SUBDIVISION NAME BLK LOT				
ACRES	00000000		MTG CODE	
K MART EXPRESS				
TAXES ARE DUE AND PAYABLE WITHOUT PENALTY		CLASSIFICATION RESIDENTIAL		
FROM THRU	OCT 1 18 FEB 28 19	ROLLBACK YRS 00	EQ FACTOR 00000	
PROPERTY TAX INFORMATION				
APPRAISAL	\$ 159,100	CO. 095		
ASSESSMENT @ 25%	\$ 63,640	CITY		
TAX RATE PER \$100 OF ASMT	\$ 0.6075	404		
CURRENT TAXES	\$ 387.00	SSD		
ROLLBACK TAXES	\$ 0.00			
TOTAL DUE	\$ 387.00			

ALATEX  
PO BOX 927000DEPT 768TAX  
HOFFMAN ESTATES, IL 60179

TAX YR	2018	RECEIPT NO.	0000232	
ROBERT SPRINGER COMMISSIONER OF FINANCE 200 CASTLE HEIGHTS AVE N LEBANON TN 37087				
(615) 444-6300				
DI 03	MAP 058	GP	CTL MAP 058	PARCEL 01901 S/I 000
PROPERTY ADDRESS W MAIN ST 1443				
SUBDIVISION NAME			BLK	LOT
ACRES	000000804		MTG CODE	
K-MART SEE SI 001 KMArt EXPRESS				
TAXES ARE DUE AND PAYABLE WITHOUT PENALTY		CLASSIFICATION RESIDENTIAL		
FROM THRU	OCT 1 18 FEB 28 19	ROLLBACK YRS 00	EQ FACTOR 00000	
PROPERTY TAX INFORMATION				CO.
APPRAISAL	\$ 2,856,000	095		
ASSESSMENT @ 26%	\$ 1,143,200	CITY		
TAX RATE PER \$100 OF ASMT	\$ 0.6075	404		
CURRENT TAXES	\$ 6,945.00	SSD		
ROLLBACK TAXES	\$ 0.00			
TOTAL DUE	\$ 6,945.00			

ALATEX  
PO BOX 927000 DEPT 768TAX  
HOFFMAN ESTATES, IL 60179

Wilson - 2018 Property Tax Notice  
Jim H. Major, Trustee



Jim H. Major, Trustee  
P.O. BOX 885  
Lebanon, TN 37088



DIST	MAP	GP	C-MAP	PARCEL	SP-INT	I	CITY
3	58		58	19.01	000		404
Property Address		Tax Bill #		Tax Year		TOTAL DUE	
1443 W MAIN ST		779		2018		\$33,171.00	

■ To avoid interest, taxes must be paid by February 28th, 2019

■ Date printed: 10/22/2018

■ Balance due if paid in October: \$33,171.00



ALATEX C/O KMArt CORPORATION  
PO BOX 927000 DEPT 768TAX  
HOFFMAN ESTATES, IL 60179

Jim H. Major, Trustee  
P.O. BOX 865  
Lebanon, TN 37088  
PHONE: (615) 444-0894  
FAX: (615) 449-4678

LIFT OR TEAR ALONG THIS LINE

Please return the top portion along with your check.

Wilson - 2018 Property Tax Notice

DIST	MAP	GP	C-MAP	PARCEL	SP-INT	I	CITY
3	58		58	19.01	000		404

Any questions please call office at the numbers printed below.  
To avoid interest, taxes must be paid by  
February 28th, 2019

Balance due if paid in October: \$33,171.00

Wilson County Trustee  
P.O. BOX 865  
Lebanon, TN 37088  
PHONE: (615) 444-0894  
FAX: (615) 449-4678

■ On our website: <http://tnpayments.com/wilson>  
with an electronic check, credit or debit card (Additional fees will apply).

For City Taxes Please Call  
Lebanon 615-444-6300  
Watertown 615-237-3326  
MT Juliet 615-773-6208 or 615-754-2552

Property Address		
1443 W MAIN ST		
Classification		
Subdivision		
Lot	Acres	Block
	8.04	
Additional Description		
K-MART SEE SI 001 KMArt EXPRESS		
Land Value	\$	888,300.00
Improvement Value	\$	1,969,700.00
Personal Property	\$	0.00
Appraised Value	\$	2,858,000.00
Exemption		No
Equal Factor		0
Net Value	\$	2,858,000.00
Assessed %		0.400000000
Assessed Value	\$	1,143,200.00
Base Tax Rate	\$	2.51890
Base Tax	\$	28,796.00
SSD Tax Rate	\$	0.38270
SSD Tax	\$	4,375.00
Total Tax	\$	33,171.00
Interest	\$	0.00
Rollback Tax	\$	0.00
Balance Due	\$	33,171.00